

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, November 10, 2021

Hearing Room 302

9:30 AM

1:00-00000

Chapter

#0.00 This calendar will be conducted remotely, using ZoomGov video and audio.

Parties in interest and members of the public may connect to the video and audio feeds, free of charge, using the connection information provided below.

Individuals may participate by ZoomGov video and audio using a personal computer (equipped with camera, microphone and speaker), or a handheld mobile device (such as an iPhone or Android phone). Individuals may opt to participate by audio only using a telephone (standard telephone charges may apply).

Neither a Zoom nor a ZoomGov account is necessary to participate and no pre-registration is required. The audio portion of each hearing will be recorded electronically by the Court and constitutes its official record.

Video/audio web address: <https://cacb.zoomgov.com/j/1602298161>

Meeting ID: 160 229 8161

Password: 102516

Dial by your location: 1 -669-254-5252 OR 1-646-828-7666

Meeting ID: 160 229 8161

Password: 102516

Docket 0

Matter Notes:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, November 10, 2021

Hearing Room 302

9:30 AM

CONT...

Chapter

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, November 10, 2021

Hearing Room 302

10:00 AM

1:13-15790 Martha Alicia Ybanez

Chapter 13

#1.00 Motion for relief from stay

WV 23 JUMPSTART, LLC

fr. 11/3/21

Docket 39

Matter Notes:

- NONE LISTED -

Tentative Ruling:

The underlying state court complaint was filed during the pendency of Debtor's case 11-23287 and the default judgment was entered during the pendency of Debtor's case 13-15790. As noted by Debtor's counsel in her Opposition, the Court cannot consider annulling the stay in this case or in 16-12315 (cal. #2) until a motion to annul the stay is filed in case 1:11-bk-23287. On 11/5/2021, Movant's motion to reopen 1:11-bk-23287 for the purpose of filing a motion to annul the automatic stay was granted by the Court.

APPEARANCE REQUIRED - the parties should be prepared to discuss (1) setting a continued hearing date for the matters on this week's calendar, so that they can be considered with the anticipated motion to annul stay in 11-bk-23287; (2) whether a similar motion will need to be filed in 1:12-19388; and (3) whether the parties believe an evidentiary hearing will be necessary regarding issues of contested fact re Movant's notice of the bankruptcies and Debtor's knowledge of the notice of the state court litigation.

Party Information

Debtor(s):

Martha Alicia Ybanez

Represented By
James D Zhou

Trustee(s):

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, November 10, 2021

Hearing Room 302

10:00 AM

CONT... Martha Alicia Ybanez

Chapter 13

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, November 10, 2021

Hearing Room 302

10:00 AM

1:16-12315 Martha Alicia Ybanez

Chapter 11

#2.00 Motion for relief from stay

WV 23 JUMPSTART, LLC

fr. 11/3/21

Docket 182

Matter Notes:

- NONE LISTED -

Tentative Ruling:

See Tentative Ruling for cal. no. 1

APPEARANCE REQUIRED

Party Information

Debtor(s):

Martha Alicia Ybanez

Represented By

Matthew D. Resnik

Roksana D. Moradi-Brovia

Movant(s):

WV 23 Jumpstart, LLC,

Represented By

Lior Katz

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, November 10, 2021

Hearing Room 302

10:00 AM

1:20-10336 Henry Lozada

Chapter 13

#3.00 Motion for relief from stay

CAPITAL ONE AUTO FINANCE

Docket 54

Matter Notes:

- NONE LISTED -

Tentative Ruling:

Petition Date: 2/12/2020
Ch. 13 plan confirmed: 5/12/2020
Service: Proper. No opposition filed.
Property: 2018 Toyota Camry
Property Value: \$16,283 (per debtor's schedules)
Amount Owed: \$17,848.89
Equity Cushion: 0.0%
Equity: \$0.00.
Post-Petition Delinquency: \$1,911.93 (three payments of \$637.31)

Disposition: GRANT under 11 U.S.C. 362(d)(1). GRANT relief requested in paragraph **2** (proceed under applicable non-bankruptcy law) and **6** (waiver of 4001(a)(3) stay).

NO APPEARANCE REQUIRED—RULING MAY BE MODIFIED AT HEARING.
MOVANT TO LODGE ORDER WITHIN 7 DAYS.

Party Information

Debtor(s):

Henry Lozada

Represented By
David H Chung

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, November 10, 2021

Hearing Room 302

10:00 AM

1:20-12267 Bernardino B Muniz

Chapter 13

#4.00 Motion for relief from stay

US. BANK TRUST NATIONAL ASSOC.

Docket 46

***** VACATED *** REASON: Resolved per APO (ECF doc. 51) - hm**

Matter Notes:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Bernardino B Muniz

Represented By
William J Smyth

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, November 10, 2021

Hearing Room 302

10:00 AM

1:21-11170 Maryna Koval

Chapter 13

**#5.00 Motion in individual case for order confirming
 termination of stay**

Docket 68

Matter Notes:

- NONE LISTED -

Tentative Ruling:

On May 26, 2021, Debtor and Anatoliy Chizmar ("Chizmar") filed this chapter 13 case. Chizmar had two previous bankruptcy cases that were not filed jointly with Debtor Koval, which were dismissed within the previous year. The First Ch. 13, 20-12138-MT, was a chapter 13 that was filed on 12/2/2020 and dismissed on 2/24/2021 at confirmation. The Second Ch. 13, 21-10304-MT, was a chapter 13 that was filed on 2/24/2021, the same day as the dismissal of the First Ch. 13, and dismissed with a 180-day bar to re-filing on 5/25/21/2021. The Order dismissing the case with a bar was entered on 5/27/2021 (21-10304, ECF doc. 51). This is Debtor Koval's first bankruptcy filing.

Before the Second Ch. 13 was formally dismissed by the Order, ECF doc. 51, Chizmar and Debtor filed this joint case in the U.S. Bankruptcy Court for the Southern District of California, then assigned case no. 21-02169-MM13. After hearing argument on Chizmar and Debtor's jointly filed Motion to Impose a Stay under 362, U.S. Bankruptcy Judge Margaret Mann denied the Motion as to Chizmar, and stated that "The court's ruling does not have any impact on any automatic stay that may have been triggered by the filing of Maryna Koval's first bankruptcy, as that issue is not before the court." Minute Order Denying Motion to Impose Stay, 21-11170-MT, ECF doc. 26. Thereafter, Judge Mann entered an Order Transferring Venue to this Court, ECF doc. 27, to "protect the interest of justice against forum shopping[.]"

Movant Roel Enterprises ("Movant") seeks an order confirming that no stay arose in this case under 362(c)(4)(A)(ii). Movant is the assignee of the original lender, Jacqueline Stein. Motion, Ex. P. Movant's predecessor held a second position deed of trust on real property at 5725 Lemona Ave, Van Nuys, CA 91411 (the "Property") that secured a \$100,000 loan taken by Chizmar on or about June 6, 2019. Decl. of

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, November 10, 2021

Hearing Room 302

10:00 AM

CONT... Maryna Koval

Chapter 13

Yuri Stein ISO Motion, Ex. F. Movant's predecessor foreclosed on the Property on June 29, 2021, and then transferred her interest to Movant. Id., Ex. P. Movant argues that because there were two single or joint cases filed by or against Chizmar that were pending but dismissed within the year preceding the petition date in this case, no stay arose in this case as to Chizmar's property. Debtor opposes the Motion, arguing that the Property is community property under California law because it was purchased during her marriage and that it is necessary for her reorganization. She states in her declaration that her name does not appear on the title for the Property or on the loan. Decl. of Maryna Koval ISO Opp., ¶ 3.

Debtor's spouse was a co-debtor in this case until the Court dismissed him because it imposed a 180-day bar on him for refiling. It was represented to the Court in the hearing on the OSC issued in this case related to Chizmar's barred status (ECF doc. 31) that Debtor and Chizmar were not living together and that he (Chizmar) was living and working in San Diego.

The relevant Bankruptcy Code provision, § 362(c)(4)(A), provides:

(i) if a single or joint case is filed by or against a debtor who is an individual under this title, and if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed, other than a case refiled under section 707(b), the stay under subsection (a) shall not go into effect upon the filing of the later case; and

(ii) on request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect[.]

The Bankruptcy Appellate Panel for the Ninth Circuit (the "BAP") in In re Nelson, held that § 362(c)(4)(A)(i) unambiguously specifies that "the stay under [§ 362(a)] shall not go into effect upon the filing of the [third] case" and that where the factual predicate of § 362(c)(4)(A)(i) is satisfied, no stay arises with the filing of the third petition. Nelson v. George Wong Pension Trust (In re Nelson), 391 B.R. 437 (B.A.P. 9th Cir. 2008). The chapter 13 debtors in Nelson did not dispute that they had previously had two bankruptcy cases pending and dismissed within the year before their third bankruptcy case. Id. at 446. Instead, they argued that § 362(c)(4)(A)(i) was ambiguous as to whether the automatic stay was in effect as to property of the estate but not property of the debtor because of its placement near § 362(c)(3)(A). Id. The BAP noted that not only is the language of § 362(c)(4)(A)(i) facially unambiguous, but also that the debtors' interpretation conflicts with the plain

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, November 10, 2021

Hearing Room 302

10:00 AM

CONT... Maryna Koval

Chapter 13

language: "To accept [the debtors'] position, a reader must somehow convert the phrase in § 362(c)(4)(A)(i) providing that the § 362(a) automatic stay 'shall not go into effect' to one providing that 'the stay arises and is in effect, but may be terminated.'" Id. at 448.

Chizmar filed the single case, the First Ch. 13, 20-12138-MT, on 12/2/2020, later dismissed on 2/24/2021. Chizmar then filed the single case, the Second Ch. 13, 21-10304-MT, on 2/24/2021, the same day as the dismissal of the First Ch. 13, later dismissed with a 180-day bar to re-filing on 5/26/2021. There is no argument that the statutory requirements of § 362(c)(4)(A)(i) are satisfied, in that there were "2 or more single or joint cases of the debtor" – that is, Chizmar – that were pending and so it follows that no stay arose when this third, joint petition was filed in the Southern District of California on May 26, 2021. There is no exception that can be read into the statute to permit a stay if you add another debtor. When Congress uses particular language in one place in a statute, and does not use that language in another place, the omission should be deemed intentional." Id. The B.A.P. in Nelson also explained that "Congress could, and did, intend the consequences of repeat filings to be different, and potentially more severe, as the number of successive filings increases." Id. at 452.

For the reasons stated above, the Motion for Order Confirming No Stay is in Effect under 11 U.S.C. § 362(c)(4)(A)(ii) is GRANTED.

APPEARANCE REQUIRED

Party Information

Joint Debtor(s):

Maryna Koval

Represented By
Steven R Houbeck

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, November 10, 2021

Hearing Room 302

10:00 AM

1:21-11685 Farima Jafarzadeh Hirschi

Chapter 13

#6.00 Motion in Individual Case for Order Imposing a Stay or
Continuing the Automatic Stay as the Court Deems Appropriate .

Docket 10

Matter Notes:

- NONE LISTED -

Tentative Ruling:

On October 13, 2021, Debtor filed this chapter 13 case. Debtor had one previous bankruptcy case that was dismissed within the previous year. The First Filing, 20-11880-MT, was a chapter 13 that was filed on 10/21/2020 and dismissed on 9/30/2021 at confirmation.

Debtor now moves for an order continuing the automatic stay as to all creditors. Debtor argues that the present case was filed in good faith notwithstanding the dismissal of the previous case because she discovered in the First Filing that the second position lien matured during the life of the plan and that she may not have been able to value the property to strip the third position lien. Debtor states that since the First Filing was dismissed, she has crafted a new plan with her attorney and, while it relies on contributions from her son, her brother and her nephew, she believes she can be successful with her family's help in saving whatever equity is in her home while she battles cancer. Debtor claims that the property is necessary for a successful reorganization because this is her primary residence, and a source of income via Airbnb.

Service proper on regular notice. No opposition filed.

MOTION GRANTED. RULING MAY BE MODIFIED AT HEARING.
NO APPEARANCE REQUIRED

Party Information

Debtor(s):

Farima Jafarzadeh Hirschi

Represented By
Jeffrey J Hagen

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, November 10, 2021

Hearing Room 302

10:00 AM

CONT... Farima Jafarzadeh Hirschi

Chapter 13

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, November 10, 2021

Hearing Room 302

11:00 AM

1:18-12698 Green Nation Direct, Corporation

Chapter 7

Adv#: 1:20-01089 Zamora, Chapter 7 Trustee v. Hernandez

#7.00 Status Conference Re Complaint to Avoid
and Recover Post-Petition Transfers and
Fraudulent Transfers; to Preserve Avoided
and Recovered Transfers for Benefit of
the Bankruptcy Estate: Disallowance of
Claim No. 39

fr. 1/6/21; 9/8/21

Docket 1

***** VACATED *** REASON: Dismissed w/ prejudice per settlement (ECF
doc. 14) - hm**

Matter Notes:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Green Nation Direct, Corporation	Pro Se
----------------------------------	--------

Defendant(s):

Jorge Hernandez	Pro Se
-----------------	--------

Plaintiff(s):

Nancy J Zamora, Chapter 7 Trustee	Represented By Richard P Steelman Jr Jeffrey S Kwong Edward M Wolkowitz
-----------------------------------	--

Trustee(s):

Nancy J Zamora (TR)	Represented By Jeffrey S Kwong
---------------------	-----------------------------------

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, November 10, 2021

Hearing Room 302

11:00 AM

CONT... Green Nation Direct, Corporation

Chapter 7

Edward M Wolkowitz
Richard P Steelman Jr

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, November 10, 2021

Hearing Room 302

11:00 AM

1:18-12698 Green Nation Direct, Corporation

Chapter 7

Adv#: 1:20-01090 Zamora, Chapter 7 Trustee v. Vasquez

#8.00 Plaintiff's Motion For Default Judgment Under LBR 7055-1

Docket 17

Matter Notes:

- NONE LISTED -

Tentative Ruling:

On March 17, 2021, Defendant Brayan Vasquez ("Defendant") was served with Trustee Plaintiff's Alias Summons & Complaint for Avoidance and Recovery of Preferential Transfers . Motion, Ex. C. Defendant was to have filed an answer or responsive pleading on or before April 14, 2021. Default was entered against Defendant on July 14, 2021. On Oct. 19, 2021, Plaintiff filed this Motion for Default Judgment. To date, Defendant has not filed a response or moved to vacate the entry of default.

To determine whether default judgment should be entered the Court may consider: (1) possibility of prejudice to plaintiff, (2) merits of plaintiff's substantive claims; (3) sufficiency of the complaint, (4) sum of money at stake in the action, (5) possibility of a dispute concerning material facts, (6) whether default was due to excusable neglect, and (7) strong policy favoring decisions on the merits. See Eitel v. McCool, 782 F.2d 1470, 1471-71 (9th Cir. 1986) citing, 6 Moore's Federal Practice, ¶ 550-05[2], at 55-24 to 55-26.

The decision whether to enter default judgment is discretionary and given lack of merit in substantive claims, there is no abuse of discretion in declining to enter default judgment in favor of plaintiff. See Aldabe v. Aldabe, 616 F.2d 1089, 1092-93 (9th Cir. 1980).

Having reviewed the docket for this adversary, the Motion, and the evidence submitted in support, the Court finds that Plaintiff has demonstrated it is entitled to judgment.

Motion for Default Judgment is GRANTED

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, November 10, 2021

Hearing Room 302

11:00 AM

CONT... Green Nation Direct, Corporation

Chapter 7

APPEARANCE REQUIRED DUE TO DEFAULT ENTRY OF JUDGMENT

Trustee to lodge judgment within 7 days

Party Information

Debtor(s):

Green Nation Direct, Corporation	Pro Se
----------------------------------	--------

Defendant(s):

Brayan Vasquez	Pro Se
----------------	--------

Plaintiff(s):

Nancy J Zamora, Chapter 7 Trustee	Represented By Richard P Steelman Jr Jeffrey S Kwong Edward M Wolkowitz
-----------------------------------	--

Trustee(s):

Nancy J Zamora (TR)	Represented By Jeffrey S Kwong Edward M Wolkowitz Richard P Steelman Jr
---------------------	--

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, November 10, 2021

Hearing Room 302

11:00 AM

1:18-12698 Green Nation Direct, Corporation

Chapter 7

Adv#: 1:20-01090 Zamora, Chapter 7 Trustee v. Vasquez

#8.01 Status Conference Re: Complaint for:
(1) Avoidance and Recovery of Preferential
Transfers [11 U.S.C. Sections 547(b), 550(a),
and 551]

fr. 1/6/21; 4/7/2, 5/19/21; 7/28/21; 11/3/21

Docket 1

Matter Notes:

- NONE LISTED -

Tentative Ruling:

Default judgment to be entered (see cal. no. 8)

Party Information

Debtor(s):

Green Nation Direct, Corporation	Pro Se
----------------------------------	--------

Defendant(s):

Brayan Vasquez	Pro Se
----------------	--------

Plaintiff(s):

Nancy J Zamora, Chapter 7 Trustee	Represented By Richard P Steelman Jr Jeffrey S Kwong Edward M Wolkowitz
-----------------------------------	--

Trustee(s):

Nancy J Zamora (TR)	Represented By Jeffrey S Kwong Edward M Wolkowitz Richard P Steelman Jr
---------------------	--

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, November 10, 2021

Hearing Room 302

11:00 AM

1:21-10554 Elsa V. Ramirez

Chapter 7

Adv#: 1:21-01040 Upstream Capital Investments LLC v. Ramirez

#9.00 Status Conference Re: Complaint Seeking
Non-Dischargeability of Debt in Core
Adversary Proceedings.

fr. 9/1/21

Docket 1

Matter Notes:

- NONE LISTED -

Tentative Ruling:

After reviewing the docket for this adversary and finding that Defendant has a Motion to Dismiss Complaint set for hearing on Dec. 8, 2021, at 1:00 p.m., the Court finds cause to continue this status conference to December 8, at 1:00 p.m.

Plaintiff to give notice of continued status conference as per LBR 7016-1.
NO APPEARANCE REQUIRED ON 11-10-2021

Party Information

Debtor(s):

Elsa V. Ramirez

Represented By
Ahren A Tiller

Defendant(s):

Elsa V. Ramirez

Pro Se

Plaintiff(s):

Upstream Capital Investments LLC

Represented By
Lynda E Jacobs

Trustee(s):

Diane C Weil (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, November 10, 2021

Hearing Room 302

11:00 AM

CONT... Elsa V. Ramirez

Chapter 7

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, November 10, 2021

Hearing Room 302

1:00 PM

1:19-12102 Hawkeye Entertainment, LLC

Chapter 11

Adv#: 1:21-01064 Hawkeye Entertainment, LLC et al v. Chang et al

#10.00 Motion to Dismiss Complaint

Docket 14

Matter Notes:

- NONE LISTED -

Tentative Ruling:

On July 17, 2009, Hawkeye Entertainment, LLC (the "Reorganized Debtor") entered into a lease agreement ("Lease Agreement") with Pax America Development, LLC. Pursuant to the terms of the Lease, the Debtor was entitled to use the first four floors and the basement of a building located at 618 South Spring Street, Los Angeles, California, more commonly referred to as the Pacific Stock Exchange Building (the "Property"). The Property is now owned by Smart Capital, LLC ("Smart Capital"), and there have been ongoing disputes between Smart Capital and the Reorganized Debtor for years. These disputes directly caused the Reorganized Debtor to file for bankruptcy under chapter 11 of the Bankruptcy Code on August 21, 2019 (Case No. 1:19-bk-12102-MT). After a contentious bankruptcy case, which included five-day trial on a lease assumption motion ("Assumption Motion"), the Reorganized Debtor confirmed a plan ("Plan"). See Docket No. 391.

The disputes between the Reorganized Debtor and Smart Capital continued. On September 20, 2021, the Reorganized Debtor and WERM Investments LLC (collectively "Plaintiffs") filed an adversary complaint ("Complaint") against Michael Chang (the owner of Smart Capital) and Smart Capital (collectively "Defendants") for: 1) preliminary injunctive relief; 2) temporary restraining order; 3) breach of contract; 4) breach of implied covenant of good faith and fair dealing; 5) breach of implied covenant of quiet enjoyment; 6) negligent interference with prospective economic advantage; 7) intentional interference with prospective economic advantage; and 8) intentional interference with contractual relations. The Plaintiff's also filed an emergency motion for a temporary restraining order and for issuance of an order to show cause why a preliminary injunction should not be issued. Docket No.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, November 10, 2021

Hearing Room 302

1:00 PM

CONT... Hawkeye Entertainment, LLC

Chapter 11

2. The Court denied the Plaintiff's emergency motion. Docket No. 13.

Defendants' filed a motion to dismiss the Complaint and the Plaintiffs oppose.

Motion to Dismiss Standard:

A motion to dismiss under Rule 12(b)(1) of the Federal Rules of Civil Procedure, made applicable to this proceeding by Rule 7012(b) of the Federal Rules of Bankruptcy Procedure, challenges the subject matter jurisdiction of a court. "Subject matter jurisdiction can never be forfeited or waived and federal courts have a continuing independent obligation to determine whether subject-matter jurisdiction exists." Leeson v. Transamerica Disability Income Plan, 671 F.3d 969, 975 n.12 (9th Cir. 2012). On a motion to dismiss for lack of subject matter jurisdiction under Rule 12(b)(1), it is the plaintiff's burden to establish the existence of subject matter jurisdiction. Kingman Reef Atoll Invs., LLC v. United States, 541 F.3d 1189, 1197 (9th Cir. 2008).

A party challenging the court's subject matter jurisdiction under Rule 12(b)(1) may bring a facial challenge or a factual challenge. *See White v. Lee*, 227 F.3d 1214, 1242 (9th Cir. 2000). "In deciding a Rule 12(b)(1) facial attack motion, a court must assume the facts alleged in the complaint to be true and construe them in the light most favorable to the nonmoving party." Torrey Pines Logic, Inc. v. Gunwerks, LLC, 2020 U.S. Dist. LEXIS 193228, 2020 WL 6106814, at *4 (S.D. Cal. July 14, 2020) (quoting Strojnik v. Kapalua Land Co. Ltd., 379 F. Supp. 3d 1078, 1082 (D. Haw. 2019) (citing Warren v. Fox Family Worldwide, Inc., 328 F.3d 1136, 1139 (9th Cir. 2003))). In contrast, a factual challenge to subject matter jurisdiction "disputes the truth of the allegations that, by themselves, would otherwise invoke federal jurisdiction." *Id.* (citing Safe Air for Everyone v. Meyer, 373 F.3d 1035, 1039 (9th Cir. 2004)).

The Defendants believe that, assuming all the factual assertions are true for purposes of this motion, this Court does not have subject matter jurisdiction. They argue that since the Plan has been confirmed, the Court's jurisdiction over related matters significantly shrinks and the causes of action in the Complaint would not be included in the Court's more limited jurisdiction. The Plaintiffs argue the Court has

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, November 10, 2021

Hearing Room 302

1:00 PM

CONT... Hawkeye Entertainment, LLC

Chapter 11

subject matter jurisdiction because the causes of action affect the viability of the Plan.

Arising Under and Arising In Subject Matter Jurisdiction:

Like all federal courts, the jurisdiction of the bankruptcy courts is created and limited by statute. Celotex Corp. v. Edwards, 514 U.S. 300, 307, 115 S. Ct. 1493, 131 L. Ed. 2d 403 (1995); Battle Ground Plaza, LLC v. Ray (In re Ray), 624 F.3d 1124, 1130 (9th Cir. 2013). Bankruptcy courts have subject matter jurisdiction over proceedings "arising under title 11, or arising in or related to cases under title 11." 28 U.S.C. § 1334(b); *see also id.* 28 U.S.C. § 157(b)(1).

"Arising under" and "arising in" are terms of art. Harris v. Wittman (In re Harris), 590 F.3d 730, 737 (9th Cir. 2000). Proceedings "arising under" title 11 involve causes of action created or determined by a statutory provision of that title. *Id.* Similarly, proceedings "arising in" title 11 are not those created or determined by the bankruptcy code, but which would have no existence outside of a bankruptcy case. Maitland v. Mitchell (In re Harris Pine Mills), 44 F.3d 1431, 1435-37 (9th Cir. 1995).

The Complaint alleges that this is a core proceeding as defined by 28 USC 157(b)(2)(A), (G), and (O); this is incorrect. Once a plan is confirmed, the debtor-in-possession becomes the reorganized debtor, and as a general rule, the bankruptcy estate usually ceases to exist after a reorganization plan is confirmed. *See* 11 U.S.C.A. § 1141(b); *see also* Hillis Motors, Inc. v. Hawaii Auto. Dealers' Ass'n, 997 F.2d 581, 587 (9th Cir. 1993) (stating that confirmation terminates the existence of the bankruptcy estate unless the plan provides for the estate to continue); Tighe v. Celebrity Home Entm't, Inc (In re Celebrity Home Entm't, Inc.) 210 F.3d 995, 998 (9th Cir. 2000); Nobel Grp., Inc v. Bank (In re Nobel Grp., Inc.), 529 B.R. 284 (Bankr. N.D. Cal. 2015). The Plan does not provide for the bankruptcy estate to remain; thus, there is no bankruptcy estate to administer assets and there is no automatic stay in effect. Accordingly, the Plaintiffs' contention that this is a core proceeding is incorrect.

None of the causes of action in the Complaint are specifically provided for in the Bankruptcy Code and all of the causes of action in the Complaint exist outside the

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, November 10, 2021

Hearing Room 302

1:00 PM

CONT... Hawkeye Entertainment, LLC

Chapter 11

context of a bankruptcy proceeding. Accordingly, this Court does not have "arising under" or "arising in" subject matter jurisdiction.

"Related To" Jurisdiction:

The final basis for jurisdiction is what is known as "related to" jurisdiction. With respect to 28 U.S.C. § 1334(b), the statutory grant of "related to" is quite broad. Courts in the Ninth Circuit generally apply the "conceivable effect" test to determine whether an action is related to bankruptcy. In re Fietz, 852 F.2d 455, 457 (9th Cir. 1988) The test for post-confirmation "related to" jurisdiction was modified from the seminal pre-confirmation Pacor test for "related to" jurisdiction, which had been previously adopted by the Ninth Circuit in Fietz v. Great W. Savings (In re Fietz), 852 F.2d 455, 457 (9th Cir. 1988) (citing Pacor, Inc. v. Higgins, 743 F.2d 984, 994 (3d Cir. 1984)). Under the Pacor test, jurisdiction depends on whether "'the outcome of the proceeding could conceivably have any effect on the estate being administered in bankruptcy. . . . [I]f the outcome could alter the debtor's rights, liabilities, options, or freedom of action . . . and which in any way impacts upon the handling and administration of the bankrupt estate'" was "somewhat overbroad in the post-confirmation context." Montana v. Goldin (In re Pegasus Gold Corp.), 394 F.3d 1189, 1193 -94 (9th Cir. 2005).

Post-confirmation bankruptcy court jurisdiction is necessarily more limited than pre-confirmation, and the Pacor formulation is somewhat overbroad in the post-confirmation context. Id. at 1194. The Ninth Circuit adopted the Third Circuit's "close nexus" test. See Willshire Courtyard v. Cal. Franchise Tax Bd (In re Courtyard), 729 F.3d 1279, 1287 (9th Cir. 2013). The "close nexus" test determines the scope of bankruptcy court's post-confirmation "related to" jurisdiction. Pegasus Gold Corp., 394 F.3d at 1194. Under the "close nexus" standard, the Court evaluates the nexus between the claims asserted and the bankruptcy plan or proceeding to determine whether it is sufficiently close to uphold bankruptcy court jurisdiction over the matter. Pegasus Gold, 394 F.3d at 1194. The test encompasses matters "affecting the 'interpretation, implementation, consummation, execution, or administration of the confirmed plan.'" Id. (quoting Binder v. Price Waterhouse & Co. (In re Resorts Int'l,

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, November 10, 2021

Hearing Room 302

1:00 PM

CONT... Hawkeye Entertainment, LLC

Chapter 11

Inc.), 372 F.3d 154, 166-67 (3d Cir. 2004)). The close nexus test "recognizes the limited nature of post-confirmation jurisdiction but retains a certain flexibility." Id.

The Plaintiffs' assert that the "close nexus" test has been satisfied because the causes of action affect the interpretation, implementation, consummation, execution, or administration of the confirmed plan because the Defendants are interfering with the Reorganized Debtor's ability to generate revenue and certain orders and the Plan are at the heart of this complaint. This position is not persuasive.

The causes of action laid out in the Complaint are all state law causes of action that have nothing to do with the Plan or any of the orders this Court may have entered. The Defendants' alleged actions have very little to do with the motions this Court addressed previously nor does the case require any interpretation of the Plan and there will not be substantial impact on the implementation, consummation, execution, or administration of the confirmed plan. The only real impact here is that revenues may be diminished due to the Defendants' actions and therefore the Reorganized Debtor may not be able to make Plan payments. This is not enough to invoke subject matter jurisdiction in this Court after the Plan was confirmed – it is even a bit of a stretch under the Pacor test. It should be recognized that this Court is familiar with the parties, the tension between the parties, and the background facts, but judicial economy does not justify federal jurisdiction. JTS Communities, Inc. v. ZB, N.A. (In re Int'l Mfg. Grp., Inc.), 574 B.R. 717, 720 (E.D. Cal. 2017).

The Court's post-confirmation jurisdiction is much more limited now that the Plan has been confirmed, and the close nexus test recognizes this. While the close nexus test recognizes the need to be flexible, the term "close nexus" suggests that for a bankruptcy court to retain post-confirmation jurisdiction the causes of action have to be intimately involved with the Plan in some capacity. Every cause of action that could in some way affect a reorganized debtor is insufficient to give bankruptcy courts subject matter jurisdiction, only those causes of action that are so closely related to a plan afford bankruptcy courts subject jurisdiction post-confirmation.

Just about every conceivable cause of action could end up affecting a reorganized debtor's revenue stream. If the Plaintiffs' position were adopted here, then there would really not be limited jurisdiction in bankruptcy courts post-confirmation, which is inconsistent with case law. There may be instances where

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, November 10, 2021

Hearing Room 302

1:00 PM

CONT... Hawkeye Entertainment, LLC

Chapter 11

affecting a rehabilitated debtor's ability to generate income could warrant bankruptcy courts to retain jurisdiction; however, there needs to be more interpretation, implementation, consummation, execution, or administration of the confirmed plan in order for a bankruptcy court to have jurisdiction. Merely saying that the ability of a reorganized debtor to generate revenue so that it can pay creditors according to a confirmed plan is not enough.

Plaintiffs argue that the Plan provides for this Court to exercise jurisdiction. Because bankruptcy court jurisdiction is conferred by statute, parties to litigation cannot confer subject matter jurisdiction where none exists.

Retention of jurisdiction provisions will be given effect, assuming there is bankruptcy court jurisdiction. But neither the bankruptcy court nor the parties can write their own jurisdictional ticket. Subject matter jurisdiction "cannot be conferred by consent" of the parties. Where a court lacks subject matter jurisdiction over a dispute, the parties cannot create it by agreement, even in a plan of reorganization. Similarly, if a court lacks jurisdiction over a dispute, it cannot create that jurisdiction by simply stating it has jurisdiction in a confirmation or other order. Bankruptcy courts can only act in proceedings within their jurisdiction. If there is no jurisdiction under 28 U.S.C. § 1334 or 28 U.S.C. § 157, retention of jurisdiction provisions in a plan of reorganization or trust agreement are fundamentally irrelevant. But if there is jurisdiction, we will give effect to retention of jurisdiction provisions.

In re Nobel Grp., Inc., 529 B.R. 284, 291 (Bankr. N.D. Cal. 2015) (quoting Binder v. Price Waterhouse & Co., LLP (In re Resorts Int'l, Inc.), 372 F.3d 154, 161 (3rd Cir. 2003)). Even though the Plan provides for this Court to retain jurisdiction for a plethora of issues, the law limits this Courts subject matter jurisdiction post-confirmation; therefore, whether the plan allows for the causes of action in the Complaint to be adjudicated in this Court is irrelevant.

For all the reasons, this Court does not have subject matter jurisdiction to adjudicate this case.

Abstention:

28 U.S.C. § 1334(c)(1) allows for the Bankruptcy Court to "abstain[]" from

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, November 10, 2021

Hearing Room 302

1:00 PM

CONT... Hawkeye Entertainment, LLC

Chapter 11

hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11" when it is "in the interest of justice, or in the interest of comity with State courts or respect for State law." Winding Creek Solar LLC v. Pac. Gas & Elec. Co., 2021 U.S. Dist. LEXIS 132282 (N.D. Cal. 2021). The factors considered by courts are:

(1) the effect or lack thereof on the efficient administration of the estate if a Court recommends abstention, (2) the extent to which state law issues predominate over bankruptcy issues, (3) the difficulty or unsettled nature of the applicable law, (4) the presence of a related proceeding commenced in state court or other nonbankruptcy court, (5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334, (6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case, (7) the substance rather than form of an asserted 'core' proceeding, (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court, (9) the burden of [the bankruptcy court's] docket, (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties, (11) the existence of a right to a jury trial, and (12) the presence in the proceeding of nondebtor parties.

In re Eastport Assoc., 935 F.2d 1071, 1075-76 (9th Cir. 1991).

In the event the Court had subject matter jurisdiction, abstention would be appropriate. First, most of the causes of action are based on state law – the only federal law mentioned in the Complaint is for temporary restraining order and preliminary injunction which can also be sought in the state court. Second, there is no bankruptcy issues present. Third, there is no bankruptcy estate to administer since the confirmation of the Plan terminated the bankruptcy estate. Fourth, the claims are remote from the main bankruptcy case. At its heart, this is the latest battle in a prolonged war between a landlord and tenant. This Court became involved when the tenant filed for bankruptcy and sought to assume the lease pursuant to the Bankruptcy Code; thereby, requiring this Court to adjudicate the matter within the confines of the Assumption Motion. Now that the Assumption Motion is over and the Plan has confirmed, this Court no longer has a reason to preside over what is essentially a landlord tenant issue. Finally, there are concerns this maybe forum shopping and the

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, November 10, 2021

Hearing Room 302

1:00 PM

CONT... Hawkeye Entertainment, LLC

Chapter 11

Defendants have indicated that they will request a jury. Even if the Court had subject matter jurisdiction, abstention would be appropriate here.

Even though this Court is familiar with all the facts surrounding these parties, there really is no reason for this case to be in the bankruptcy court. For all of these reasons, the motion to dismiss is GRANTED. The Plaintiffs may file refile their complaint in court that has subject matter jurisdiction.

Appearance Required.

Party Information

Debtor(s):

Hawkeye Entertainment, LLC

Represented By
Sandford L. Frey

Defendant(s):

Michael Chang

Represented By
David S Kupetz

Smart Capital Investments I, LLC,

Represented By
Steven Werth
David S Kupetz

Top Properties Corporation

Represented By
David S Kupetz

Plaintiff(s):

Hawkeye Entertainment, LLC

Represented By
Sandford L. Frey

WERM Investments LLC

Represented By
Sandford L. Frey

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, November 10, 2021

Hearing Room 302

1:00 PM

1:21-10865 Starr F Taxman

Chapter 13

Adv#: 1:21-01059 Kurtz v. Taxman

#11.00 Motion to Dismiss Adversary Proceeding Pursuant to FRCP
12(b)(6) and FRBP 7012

Docket 4

Matter Notes:

- NONE LISTED -

Tentative Ruling:

Continued to June 1, 2022 at 10:30 am, per stipulation to wait until state court proceedings are resolved (ECF doc. 26)

NO APPEARANCE REQUIRED ON 11-10-2021

Party Information

Debtor(s):

Starr F Taxman

Represented By
Stella A Havkin

Defendant(s):

Starr F Taxman

Represented By
Stella A Havkin

Plaintiff(s):

Gary Alan Kurtz

Represented By
Stephen L Burton

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se